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ILLINOIS COMMERCE COMMISSION

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STATE OF ILLINOIS
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ILLINOIS POWER COMPANY)

Complainant-Counter Respondent,)

vs.)

M.J.M. Electric Cooperative, Inc., an Illinois not)
for profit cooperation)

Respondent-Counter Complainant.)

NO. 00-0832

382

CHIEF CLERK'S OFFICE

REPLY TO RESPONSE OF M.J.M. ELECTRIC COOPERATIVE INC.
TO THE MOTION TO DISMISS OF ILLINOIS POWER

NOW COMES the Complainant, Illinois Power Company ("IPC"), by and through its attorneys, Hughes, Hill & Tenney L.L.C., and for its Reply to the Response of M.J.M. Electric Cooperative Inc. ("M.J.M.") to the Motion to Dismiss of Illinois Power states as follows:


1. IPC filed its Motion to Dismiss its Complaint against M.J.M. after the Respondent had filed its Answer and Affirmative Defenses and IPC had filed its Answers to the Affirmative Defenses. At the time that the Motion to Dismiss was filed, the Respondent had not filed a Counter-Complaint.
2. Filed with the Response of M.J.M. to IPC's Motion to Dismiss is a document entitled Counter-Complaint. At no time prior to filing the Counter-Complaint, had M.J.M. requested leave to file such Counter-Complaint.
3. The rules of practice followed by the Illinois Commerce Commission provides for the filing of motions and specifically states that motions for other relief and order may be appropriate. 83 Ill. Adm. Code, Part 200, Section 200.190. IPC's Motion to Dismiss is an example of other relief which is appropriate.
4. M.J.M. argues that Section 5/2-1009 of the Illinois Code of Civil Procedure does

not apply to dockets filed with the Illinois Commerce Commission. Even a cursory review of IPC's motion makes it abundantly clear that it has not sought relief under the Illinois Code of Civil Procedure. Contrary to the Respondent's position, the Illinois Commerce Commission has the authority to grant a motion to dismiss a complaint, without prejudice pursuant to Section 200.190 of Chapter 83 of the Illinois Administrative Code.

5. The Respondent claims procedural due process should preclude IPC from dismissing its Complaint. There is no basis in law or fact for the Respondent's argument. If the Respondent believes certain issues need to be addressed by the Illinois Commerce Commission, the Respondent could rename its document entitled Counter-Complaint as a Complaint and file it in a new docket.
6. In addition, the Respondent will not be prejudiced if the Complaint is permitted to be dismissed.

WHEREFORE, the Complainant, IPC respectfully requests the Illinois Commerce Commission to allow the Motion to Dismiss the Complaint, without prejudice.

ILLINOIS POWER COMPANY, an Illinois
corporation, Complainant

By 
Of Hughes, Hill and Tenney, L.L.C.
Its Attorneys

Gregory Q. Hill
HUGHES, HILL & TENNEY, L.L.C.
160 E. Main Street, Suite 200
P. O. Box 560
Decatur, IL 62525-0560
Telephone: (217) 428-5383

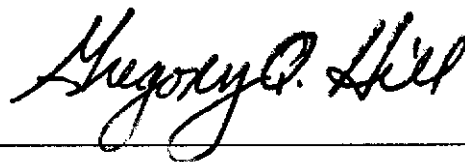
PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the following:

Mr. Jerry Tice
101 E. Douglas Street
Petersburg, IL 62675

Honorable John Albers
Illinois Commerce Commission
527 East Capitol Avenue
P. O. Box 19280
Springfield, IL 62794-9280

by enclosing the same in an envelope, plainly addressed to each person at the address shown, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Decatur, Illinois, on the 25th day of October, 2000.



Gregory Q. Hill
HUGHES, HILL & TENNEY, L.L.C.
160 E. Main Street, Suite 200
P. O. Box 560
Decatur, IL 62525-0560
Telephone: (217) 428-5383